EVALUATION OF THE EFFECTIVENESS OF JUDICIAL MANAGEMENT AS A MEANS OF ASSISTING COMPANIES IN FINANCIAL DISTRESS. A CASE STUDY OF DUBE TEXTILES LIMITED

Moreblessing Shingai Mutemachimwe
Midlands State University

Newman Wadesango
University of Limpopo

ABSTRACT

This study investigates the effectiveness of judicial management procedures as a corporate rescue mechanism within the framework of insolvency law. It identifies and analyzes the limitations of current insolvency legislation in relation to its foundational objectives, particularly the necessity to safeguard the interests of creditors, shareholders, and society. Utilizing a quantitative research approach, data were collected through structured questionnaires. The findings reveal significant shortcomings in the judicial management process, highlighting its applicability solely to registered companies while neglecting other business entities. Additionally, it was discovered that individuals eligible for appointment as judicial managers are not required to possess formal qualifications in business management, which is critical for the successful revival of financially distressed companies. Considering these insights, the study advocates for comprehensive law reform aimed at enhancing the efficacy of corporate rescue procedures, thereby better serving the diverse interests involved.

Keywords: Judicial Management, Financial Distress, Corporate Rescue Procedures. Judicial Managers.

Jell Classification: M41, M49

1. INTRODUCTION

Zimbabwe's insolvency law has become outdated, failing to adapt to the evolving business landscape. Recent reports highlight that David Whitehead Textile Ltd remained under judicial management for nearly a decade before being released from this court-supervised recovery process. The trend of companies seeking judicial management as a means of survival is on the rise, yet many ultimately fail and face liquidation. For instance, Steelnet has been under judicial management since 2015, while MARS, which entered judicial management in 2013, only managed to recover in 2019 through acquisition. These instances raise concerns about the effectiveness of the judicial management system and highlight a gap in the literature that needs to connect the theoretical framework of the Companies Act with real-world industry conditions. This research aims to investigate the efficacy of judicial management as a tool for rescuing financially distressed companies.

The paper begins with an introduction, followed by a background section that provides context for the study. A review of existing literature on judicial management offers insights from various scholars in the field. The research adopts a quantitative approach, focusing on creating a detailed, data-driven picture of the phenomenon in question rather than exploring qualitative aspects. It aims to clearly articulate the problem and develop a comprehensive understanding of judicial management's effectiveness in aiding companies facing financial challenges. For the literature review, sources included journal articles, books, magazines, and newspapers. The final section presents empirical findings gathered from fieldwork, discussing how these results align with or challenge existing literature on the subject.

1.1 Background Of The Study

The Zimbabwean economy is currently declining as most business entities are facing viability challenges and most of them are commercially insolvent. In as much as external factors contribute to the decline and closure of business in Zimbabwe, much must be said about the governance of companies whereby boards have failed to uphold the correct corporate governance practices leaving companies vulnerable and facing closure. To mitigate this and resuscitate the economy, there are only two corporate rescue procedures that the insolvency law provides to rescue financially ailing firms, and these are liquidation and judicial management.

Judicial management was put in place with the premise that business entities go through the due process and in the end be restored to their viable state. This is supported by (The Financial Gazette, 2015) as it highlighted an increase in the number of companies ordered by court provisions to be instituted under the judicial management scheme. However, in practice, the opposite has proved to be true as indicated by a newspaper article which states that documents obtained from the Master of the High Court's office indicate that 49 companies were ordered to be wound up between January 2017 and October 2017 and November 2017 and December 2018, 55 other companies were granted orders to be liquidated. "For the past 20 years or so we have not found the adequate investment to retool," said Charles Nahmod in an article in The Herald as he was commenting on the current state of the economy in Zimbabwe regarding rapid increase in the number companies being liquidated. The process is deemed to be a half-way house between the life and death of a company (Hahlo, 1997). It is submitted that the judicial management process provides breathing space to companies on the brink of collapse so that they can put their house in order by providing a moratorium against creditors and divesting the control of the company from previous management that would have run it aground (Ofwono, 2014).

To this extent, judicial management has become more desirable to companies as compared to winding – up. Judicial management is designed to give creditors a respite from the enforcement of claims, whilst winding up allows for sale of the company's assets to pay the creditors' claims. Business entities have resorted to judicial management to stem off the efforts of their creditors to initiate a wind-up (Zimbabwe Economic Policy Analysis and Research Unit-ZEPARU, 2014). Even though there is a legal framework put in place to assist with the resuscitation of companies which are victims of poor corporate governance and economic decline, there has been a downturn however as there has been an increase in the winding up of companies according to (The Financial Gazette, 2015), 87 companies were liquidated in 2014 after going through the judicial management process as compared to 44 in the previous year. According to statistics by the Master of the High Court, in 2011, 20 companies were under judicial management, with the figure rising to 27 in 2012 and 51 in 2013. Court records show that 128 companies closed the nine months to September 2013 in financial distress as compared to the 114 in the previous year (The Herald, 2015).

The above statistics necessitated the need to evaluate the effectiveness of the judicial management process in ensuring that it achieves its intended purpose of resuscitating financially distressed companies and subsequently leading to the development of the nation's economy and the living standards of all relevant stakeholders affected. This has prompted this study which seeks to establish if Zimbabwe's judicial management procedure in its current form effective and efficient in assisting companies that are financially struggling.

2. LITERATURE REVIEW

This section of the paper will look at the input and output factors of the judicial management process, with the inputs being the reasons as to why a company may be placed under judicial management. Emphasis will also be placed on the application requirements for a judicial management order, the effects of the judicial

management process on the stakeholder of the ailing company and the ultimately its effectiveness in rehabilitating financially struggling companies back to their glory days.

2.1 Circumstances under which a company be placed under judicial management

In a presentation by Mugandiwa, published by the Institute for (Chartered Accounts Zimbabwe-ICAZ, n.d) a judicial management order is granted where there is reasonable probability that under a more careful and controlled management, a company will surmount its difficulties and be restored back to a successful concern. The companies act under section 300 sets out the requirements for the application of a provisional judicial management order and these are.

2.1.1 Mismanagement

The act outlines that by reason of mismanagement or for any other cause the company is unable to pay its debts, a company may be placed under judicial management and some of corporate literature identifies managerial action or inaction as top of causes of corporate ill health. (Eboiyehi & Ikpesu, 2017) argue that the symptoms and causes of financial distress are due to internal and external factors and included in these is poor management and weak corporate governance. A study by the Association of Insolvency and Restructuring Advisors shows that, only 9% of corporate failures are due to influences beyond management and sheer bad luck, the remaining 91% are related to influences management could control and 52% of those are internally generated problems that management did not control. (Collet et al, 2014) also contends that up to 80% of corporate failures are because of management failure. (Jim, 2019) cited in an article by (Olusegun, 2019) points out that, lack of competence of the CEO and management team is a major reason as to why many firms go into financial distress.

That is, the requirement for mismanagement of a company as grounds for an application for judicial management puts forward the notion that the company's management is always to blame for the company being placed under judicial management (Vera, 2020). In addition to that, Loubser believes that this may be the reason why management refrains from making applications. At first glance, the requirement suggests that the financial problems of the company are because of the failure of management to oversee the financial prudence of a firm and disregards every other economic factor (Vera, 2020). (Cilliers et al, 2000) cited by (Vera, 2020) argue also that mismanagement might be because of economic factors beyond the control of the company and not necessarily failure of the management team.

2.1.2 Inability to pay debts

The companies act points out that there needs to be probable cause for the company's inability to pay its debts and must be the reason that's hindering the company from being a viable business enterprise. Ikpesu et al (2019) states that a company is said to be in financial distress when its operating cash flow is not sufficient to meet its current obligations and (Chow et al, 2017) points out that a company is finically distressed when there are constant losses, "breaches in loan contracts" and difficulties in honoring organizational commitments. (Wesa & Otinga, 2018) alludes to this by pointing out that, failure by a company to manage their financial factor will result in the entity not meeting their obligations as at when due. (Chatsanga, 2017) argues that the requirement for 'inability to pay debts' makes the procedure available to companies when they are almost dead. He also goes on to explain how it is against the spirit of rescuing businesses as he highlights that when a company is deemed insolvent by the courts, key staff with the necessary skills to assist the judicial manager would have left possibly due to non-payment of salaries and this then stifles the efforts of the process to rehabilitate ailing companies.

This requirement gives the court discretion to determine whether the company is indeed unable to pay its debts. (Ofwono, 2014) put forward the case of Shagelok Chemicals (Pvt) Ltd v International Financial

Corporation which submitted a petition to the High Court for judicial management and had the case dismissed then appealed to the Supreme Court for the same order to no avail. Their argument was that they had become unable to service their debts and were confident that if they were ordered under judicial management, they could turn their fortunes around. The liquidator of the company shared the same sentiments but still the company was liquidated. This gives rise to questions on the scale that the courts use to determine inability to pay debts and if it is indeed an efficient measure if it prejudices some companies who meet the conditions provided for in the Companies Act.

2.1.3 Reasonable probability to become a successful concern

Section 300 (a) (ii) of the act states that a company might be granted a judicial management order if there is a reasonable probability that if it is placed under judicial management, it will be enabled to pay its debts or meet its obligations and become a successful concern. (Zvobgo, 2016) points to the case of Kotze v Tullbyk where it was held that, what is required for a court to grant a judicial management order is simply 'reasonable probability' that by proper management the company will be able to surmount its difficulties and carryon. Conradie and Lamprecht (2015) posit that, what can be considered a successful rescue in terms of the legislation is if the company is restored and continues to exist, or if the realization of assets under business rescue will result in a better return for the company's creditors and shareholders than under immediate liquidation. Chen et al (2021) states that an ideal outcome of corporate rescue is a pure rescue which is described as the restoration of a company's financial position back to its healthy status with its management and workforce intact. (Vera, 2020) refers to the Lansdown Commission which made findings that hinted that it was difficult for the courts to be able to determine "reasonable probability" of becoming a successful concern as the courts were not often in possession of sufficient evidence. (Chatsanga, 2017) also argues that the requirement places a heavy burden of proof on companies which subsequently makes the process very much restrictive.

2.1.4 It is just and equitable to do so

Finally, the act provides that in-spite of all the above requirements, there needs to be a measure as whether it is just and equitable for the courts to grant an order for judicial management. (Chen et al, 2021) implies that the court must consider the interests of shareholders and creditors and all other potential stakeholders. This requirement is in-line with the principle of corporate insolvency. The pair passu principle sees to the fair treatment of creditors across the board and this is seen as just and equitable. The court therefore holds the discretion to assess whether placing the company under judicial management would indeed benefit creditors rather than prejudice them. (Mupini, 2016) supports this requirement by stating that the courts when considering whether it is "just and equitable" to grant an order, should take into consideration the effect of the possible liquidation on the economy and community. The court, considering various reports developed during the provisional period of judicial management, as well as the opinions of the creditors and members of the company, determines whether the company concerned, if placed under judicial management, will be enabled to become a successful concern and that it is just and equitable to grant such an order. Otherwise, the court may discharge the provisional management order or make any order that it thinks just, Zimbabwe Economic Policy and Research Unit - ZEPARU (2014). On the other hand, realistically, insolvency practitioner seems to find the requirement distasteful with (Chatsanga, 2017) citing that the 'just and equitable' ground gives the court too wide a discretion to grant or not to grant an order, even where other requirements are met.

2.1.5 A company placed under Corporate Rescue-judicial management

A company is placed under judicial management by either one of two ways, that is, when the board resolves that a company voluntarily commence corporate rescue proceedings and by way of a court order

granted upon the application of an affected person to place the entity under corporate rescue, Kachara (nd). She went on further to say that, since the board is responsible for the welfare of the company and has the responsibility to promote the success of the company, it therefore makes a decision whether it should begin corporate rescue proceedings. For commencement by a court order, an affected person applies to court for an order placing the company under supervision and corporate rescue. Kachara (nd) makes a point that court proceedings are deemed to commence once the application is filed. The judicial management process can be initiated by any interested party either directly or indirectly during a winding-up hearing, where it is seen that placing the company under judicial management will be beneficial to all stakeholders affected by the decision to wind-up.

2.2 Effects Of A Judicial Management Order On Stakeholders

All affected persons are entitled to have a say in the running of the judicial management proceedings as well as the implications the procedure has on them notes (Kachara, nd). Harris (2021) adds on to say that the principal goal of corporate law should be to maximize the joint welfare of all the firm's stakeholders as the insolvency law is not merely a question of settling creditor claims but rather, it is a matter of striking a balance among the debtor, creditors and society as the law does not make all the debtor's assets available for distribution among creditors.

2.2.1 Creditors

According to (Vera, 2020) insolvency law exists to maximize the collective interests of creditors in corporate insolvency. (Mupini, 2016) alludes to this by referring to an article by (Madhuku, 1995) who argued that the current corporate insolvency law is too wary of the creditor to the extent of sacrificing other legitimate objectives of this branch of the law, that is, the societal interests in the facilitation of the recovery of the ailing companies. The creditors of the company have a right to approve or reject a business rescue plan. In support to this Chen et al (2021) states that creditors' interests are favored in the corporate rescue procedures despite the lauded objectives of granting protection to other stakeholders' interests. It appears the aim of business rescue is to add rather than detract from creditors' rights. Lokman et al (2020) says that many companies use the corporate rescue scheme to prevent creditors from acting against the company, thus infringement of their rights to be paid their dues. However, in terms of the provisions of the companies act, the court may grant a provisional judicial management order to stop the creditors from initiating a wind-up if the court deems it just and equitable to do so.

2.2.2 Employees

An article in The Sunday Mail by (Musarurwa, 2018) states that judicial managers are set out to benefit the most from the judicial management process and the interests of employees are not protected as the act does not specify their role within the judicial management proceedings. However, (Vera, 2020) argues that their interests are protected as they continue to be employed on the same terms and conditions as before the commencement of the judicial management proceedings. (Saruchera, 2021) in an article published by Grant Thornton states that the salaries and wages employees are not to be reduced as a cost cutting measure due to the prevailing labor laws. On other contracts, the business rescue practitioner may suspend, entirely, partially or conditionally, any agreement or provision of an agreement to which the company was a party at the commencement of the proceedings (Chatsanga, 2017) however, judicial managers cannot suspend labor contracts as readily as preferred because of the labor laws (Saruchera, 2021).

2.2.3 Shareholders

Shareholders' interests are generally regarded subordinate to other stakeholders during business rescue as their interests have been said to be 'at the back of the queue' during the judicial management process

Sibanda (2022). They may vote in favor of or disprove the business rescue plan if it will in any way infringe on their rights (Ofwono, 2014), however the court may in terms of the provisions of the companies act be reluctant to grant the judicial management order, if the shareholders are seeking to benefit by keeping the creditors waiting a long time to receive their dues.

2.3 Reasons For Failure Of Companies Under Judicial Management

2.3.1 Lack of capital

In the business of rescuing businesses, there is a vital aspect which is necessary for any turnaround strategy which is funding. Capital is important for the growth and development of a company, and it is equally important for the resuscitation of a failing one (Vera, 2020). Judicial managers have found it difficult to reshape the work force of financially distressed companies they are working with and to obtain new capital from banks to restart operations (Zimbabwe Economic Policy and Research Unit – ZEPARU, 2014). The ZEPARU Report also goes on to cite that not only financial capital, but lack of human capital has caused some of the companies under judicial management to fail. This would be because of the skilled personnel fleeing the ailing company and possibly aiding the competition in overtaking markets. (Chatsanga, 2017), contends that placing a company under judicial management is an indicator that the company is in a financial crisis and as such those with capital (potential investors) would show a lack of confidence in such companies as they considered to be too risky.

In a study of the failure of SMEs under Judicial Management in South Africa, Maphiri (2018) argued that some of the SMEs were financed from personal savings or bank loans and are generally undercapitalized thus their chances of surviving the process and evade liquidation were slim. In research by (Rajaram, et al., 2018), they noted that the success of the practitioner in acquiring either short or long-term finance was a key component in determining the success or failure of companies under judicial management.

2.3.2 Workload of judicial managers

It is a notable fact that judicial managers do not take up one assignment at any given time but have a portfolio of companies under their supervision which they are making efforts to turnaround. Mupini (2016) cited that some judicial management practitioners had too many cases they were handling at any given point thus negatively affecting the performance of their mandates. In support to this, (Vera, 2020) went on to say that in some instances, it was stated that some judicial managers had as many as eight judicial management cases they were handling at any given time. It was generally felt that as the number of cases handled by the judicial manager increased, so did his inefficiency and ineffectiveness. The phenomena are known in the management field as the too-much-of-a-good-thing-effect which sees managers failing to meet up to the expectations due to having too much workload in their hands (Ofwono, 2014).

2.3.3 Legal framework not aligned to the process

The Companies Act (Chapter 24:03) is the main legal authority with regards to the running of judicial management. This entails that the entire process of how the system interacts with relevant stakeholders is to be detailed within. Mupini (2016), however noted that various legislation which has a direct relationship to the stakeholders was not aligned to the provisions of the process. (Chatsanga, 2017) puts across a point that Zimbabwe's insolvency law is outdated and is not modified to suit the dictates of time and the ever-changing economic environment. In a situation like this, it wouldn't be a surprise to see some companies failing as the legal framework is not explicit enough to govern and guide stakeholders' through-out the process, (Vera, 2020). The product being reliance on court proceedings which is also a contributing factor to the failure of companies under judicial management and the process.

2.3.4 Micro and macro-economic factors

One of the other reasons why companies under judicial management fail is because of the micro and macro-economic forces in play within the environment. This reason calls to point the difference between economic distress and financial distress whereby financial distress is whereby a company is failing to pay its dues and struggling to generate adequate revenue and economic distress is as a result of fiscal and economic difficulties cites Vera (2020). The emphasis for the purposes of this section is to emphasize on economic distress as a cause for failure of companies being instituted under judicial management. Zimbabwe Economic Policy and Research Unit - ZEPARU (2014), the economic challenges currently facing the country have thrown many companies into financial distress. (Ikpesu et al, 2019) points to fluctuations in the interest rate, inflation rate, political unrest, unstable government policies and the exchange rate as some of the macro-economic factors that could lead companies into financial distress. Another scholar, Maphiri (2018) also supports this view citing that business under judicial management fail because of a failing business plan which is a determinant of economic distress whereby the feasibility and viability of a business plan is under attack by economic forces such as inflation and constant changes in the monetary and fiscal policies of the nation. This situation is paradoxical as companies under judicial management are ailing and expected to turnaround in an already ailing economy

2.3.5 Attitudes within the environment

Judicial management is a traditional and rigid system and Mupini (2016) feels that this traditional insolvency law tends to be creditor-oriented, thus placing emphasis on the creditors' well-being above and beyond the needs of the insolvent company. (Maphiri, 2018), contends to the idea and claims that in addition to being ineffective, judicial management is outdated as it sets the reimbursement of creditors as the main target of the bankruptcy process, and gives a substantial amount of control to the creditors. He feels that creditor-oriented regimes generally result in liquidation rather than a rescue of the business thus many companies under judicial management fail.

2.3.6 Interference by Shareholders

In dealing with the impatience of creditors, judicial managers have had to cope with the interference of the shareholders of the company in the day to day running of the business despite the Companies Act specifically stripping them of their duties. This would the result in a loss valuable time which could be used to implement strategies which will turn the fortunes of the company around rather than be exhausted in power struggles. Mupini (2016), noted that judicial managers ended up wasting time and money in courts with shareholders who would both be directors and owners of companies instead of having them review and assist in the implementation of rescue strategies. (Chatsanga, 2017), argued that this is common in voluntary placement of a company under judicial management where the company would have nominated a certain person to be appointed judicial manager whom the shareholders would then want to control by telling them what and what not to do. These shareholders are usually the directors who would have led the company astray and sunk it into insolvency.

2.3.7 Heavy Reliance on Courts

Mmopi (2015) contends that one of the reasons of failure of the Judicial Management system in Botswana as in Zimbabwe is the fact that it is solely administered by the courts. Having a court administered regime is costly and time consuming as much money is spent on legal fees and cumbersome court processes. The move from court supervision to self-corporate voluntary arrangement will save significant costs and enable financially distressed small companies to consider corporate rescue as an available alternative to liquidation. Owing to its heavy reliance on court proceedings, judicial management has further been regarded as unattractive because the order affects the creditworthiness of a company detrimentally, even after the order is

later set aside (Vera, 2020). Another reason why heavy reliance on the courts of the judicial management process results in the failure of the procedure is because the judicial managers cannot make major decisions on the turnaround strategies without the approval of the courts (Saruchera, 2021).

Another problem about reliance on the court was the requirement that there be a provisional and final order, and this led to inevitable delays that come with court applications as the process seemed cumbersome and lengthy (Ofwono, 2014). Literature in support of the system tends to overlook that it is the company itself that knows its financial standing and leaving it at the mercy of the courts to determine whether its standing is indeed justifiable and equitable to be under judicial management is an oversight. Heavy reliance on the courts places a heavy burden on the company which would be financially suffering already due to the costs associated with approaching the courts. When a company is facing financially distressed, the last thing that management would want to do is to spend more money, which in any case is limited according to (Ofwono, 2014).

3. RESEARCH METHODOLOGY

The study adopted a quantitative research approach. Questionnaires were used to collect data. The questionnaires had both closed and open-ended questions to allow the respondents the freedom to express their views on other relevant aspects of the problem the researcher may have left out and to avoid them from drifting away from the research topic. The population of the study included directors, creditors, employees of DUBE Textiles Ltd, the judicial manager of DUBE, subordinates of the judicial manager and the judge that ordered the entity to be instituted under judicial management. The researchers considered these groups as constituting the population for the study because they were thought of as information rich with regards to DUBE Textile Limited during the period it was under judicial management. The sampling technique used was non-probability and the sample comprised of the judge, the judicial manager, 10 DUBE Textiles Limited (DWTL) employees including the accountant, 10 subordinates of the judicial manager, 4 directors and 5 creditors. To ensure confidentiality of the respondents and confidentiality of the data collected, the researchers assured the respondents that the information they provided would be kept confidential and that their identities should not be disclosed to anyone. The researchers assured respondents of anonymity by making sure that they did not mention their names when filling out questionnaires, hence the researchers did not know the names of the respondents from whom she obtained the data necessary for this research. The researchers used the descriptive statistics model to analyze the data. The analyzed data was presented using tables, graphs and pie charts to draw meaningful conclusions from the dataset.

Table 1. Sample size

Category	**Target Population**	**Sample Size**	**Percentage**	**Data Collection Method**	
				Questionnaire	**Interviews**
Judge	1	1	100	0	1
Judicial manager	1	1	100	0	1
Directors	4	4	100	2	2
Creditors	7	5	71%	5	0
DWTL employees	15	10	67%	10	0
Judicial manager's subordinates	10	10	100%	8	2
Total	**38**	**31**	**82%**	**25**	**6**

3.1 Main Research Objective

The main research objective is:

To evaluate the effectiveness of judicial management as a means of assisting companies in financial distress.

3.1.1 Research sub-objectives

- To ascertain if there is need for improvement the judicial management procedure or rather replacement by a new procedure.
- To determine if the application requirements for a judicial management order line with the purpose and objectives of the procedure because it is Zimbabwe's main business-rescue procedure.
- To determine whose interests among all stakeholders, judicial management protects and advances.
- To identify the reasons why companies placed under judicial management fail.

3.2 Main Research Question

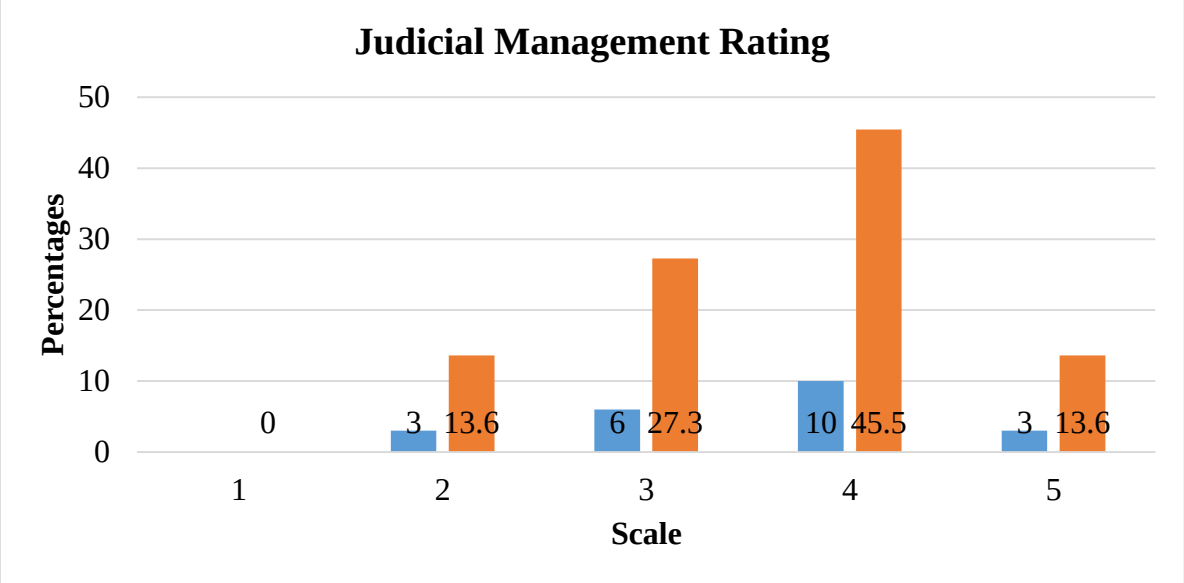
Is Zimbabwe's judicial management procedure in its current form effective and efficient in assisting companies that are financially struggling?

3.2.1 Research sub-questions

- Should the current rescue procedure be reformed or repealed and replaced with another procedure?
- Are the application requirements for judicial management order in line with the purpose and objectives of the procedure because it is Zimbabwe's only formal business-rescue procedure?
- Whose interests are protected by the judicial management procedure its current form?
- What are the causes of failure for companies placed under judicial management?

4. DATA PRESENTATION & ANALYSIS

4.1 Judicial management scale rating



Source: Field work

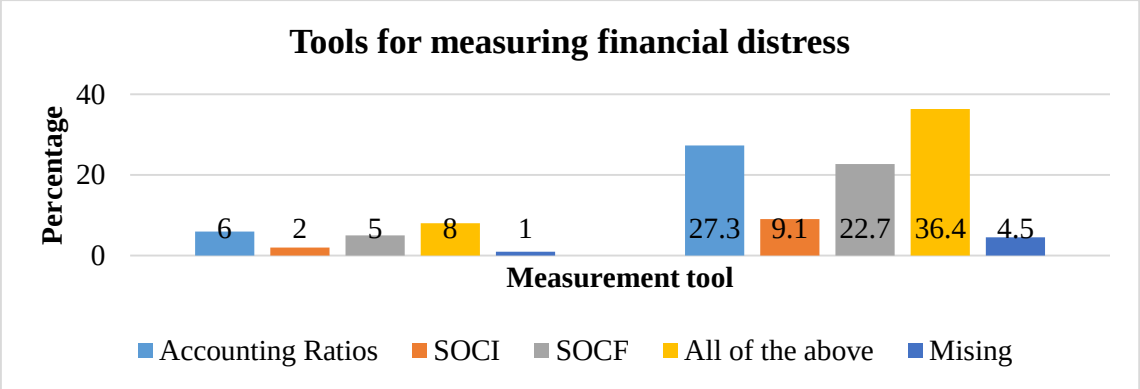
FIGURE 1
JUDICIAL MANAGEMENT SCALE RATING

4.2 Judicial Management Rating

The researchers posed a question for the respondents to give a rating on the effectiveness and efficiency of the judicial management procedure on a scale of 1 to 5 and the findings were as follows, 3 people gave the procedure a rating of 1 translating to 13.64% of the participants, 6 respondents gave it a rating of 2 translating to 27.27%, 22.73% gave the procedure a rating of 3 (5 participants) and 4 people gave a rating of 4 to the

procedure translating to 18.18% and lastly 4 respondents also gave a rating of 5 also translating to 18.18%. An interpretation of these results shows a total of 13 respondents forming cumulative percentage of 59% of the study population believe that judicial management is indeed an effective and efficient business rescue procedure as they gave it a rating above 3 stars and (Matenga, 2020) supports this by indicating that 5 of the most influential and game changers in the economy were successfully turned around by judicial management. However, a cumulative total of 41% of the respondents gave it a rating of 2 and below and this indicates that there are still inefficiencies which hinder the process from being as efficient as it should be. (Bartell, 2009) supports this view and points out that if they are met and taken into consideration in improving the procedure then judicial management could be an ideal business rescue plan. In conclusion, the results indicate that for judicial management to still considered be an effective and efficient business rescue mechanism, the procedure requires a few touch-ups to match the changes taking place in the economic environment. These results are shown in the figure below

4.2 Measurement of financial distress



Source: Field work

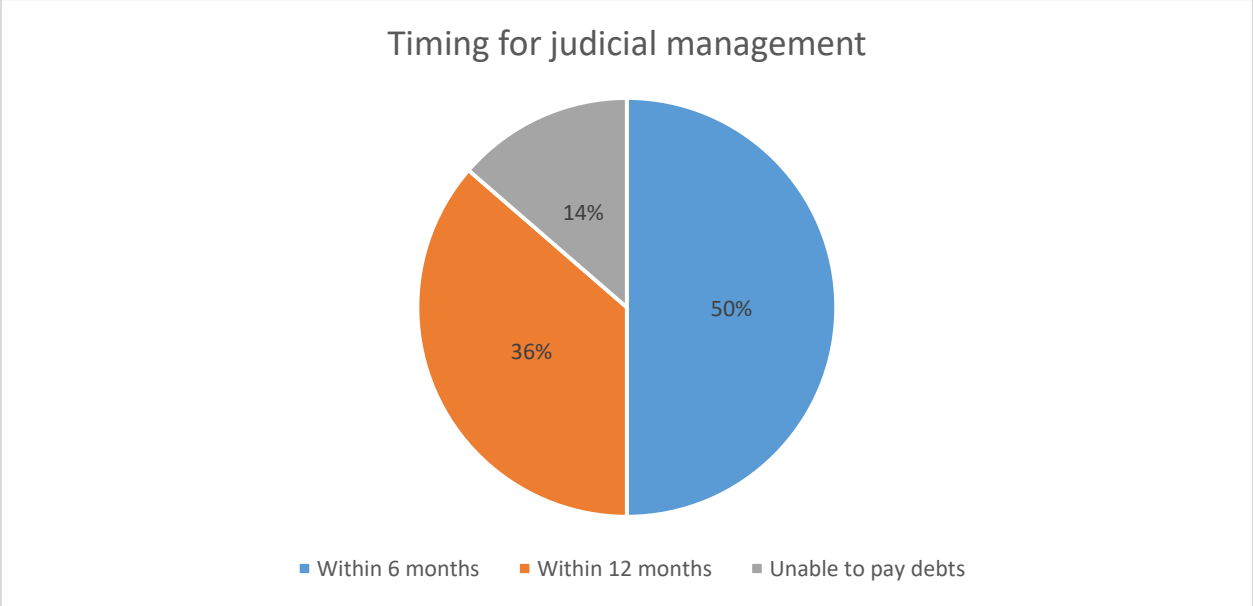
FIGURE 2
MEASUREMENT OF FINANCIAL DISTRES

As shown in figure 2, out of the 22 respondents, only 21 responded to this question and of those 36.4% (8 respondents) were of the opinion that all the set parameters be used to measure if companies are financially distressed and no respondent opted for the statement of financial position as a measure of financial distress for companies and (Mcclure, 2021) alluded to this view by pointing out that if a company is in financial distress the red flags are noticed in the financial statement of the entity. 22.7% (5 respondents) were for the statement of cash flows, in agreement to this (Chow, 2011) opined that a firm is financially distressed when its operating cash flows are inadequate to meet its obligations when due. 9.1 % (2 respondent) opted for the statement of comprehensive income and 27.3% (6 respondents) were for the accounting ratios and financial typically contend that a gearing ratio above 50% should be taken as highly levered or geared thus the company would be at financial risk (The Sunday Mail, 2020), (Thakor, 2014) supported these views by stating that the insolvency and default of a company are rooted in its liquidity and performance. With the aid of these results the researcher concluded that all the financial statements and accounting ratios are useful when it comes to measuring if a company is finically distressed.

4.3 Timing of the judicial management procedure

The figure below seeks to address the timing issue in judicial management whereby the respondents were asked to give their opinion on the ideal time for a company to start business rescue proceedings and 50%

of the respondents said when a firm anticipates that within 6 months it will be unable to pay its debts. This will then give the judicial manager ample time to rescue the company before their financial prudence worsens and they would then have to liquidate. 36% of the participants pointed out that a firm should commence the judicial management process within 12 months and 14% said when the unable to pay debts. Conclusively the researcher noted that it is best for a company to commence the judicial management process when a firm anticipates that within 6 months, they will be unable to pay their debts.

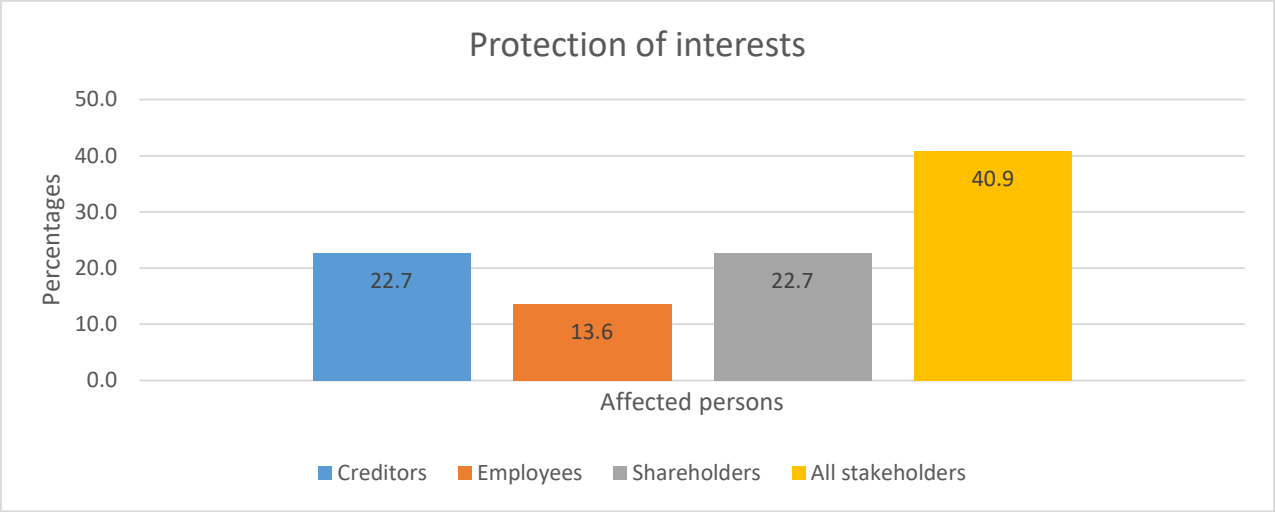


Source: Field work

FIGURE 3
IDEAL TIMING TO INITIATE JUDICIAL MANAGEMENT

4.4 Protection of interests

The figure below shows the distribution of participants who responded to the question which asked whose interests amongst all stakeholders should be protected by judicial management. 40.9% of the respondents pointed out that judicial management should protect all stakeholders of the company and (Chan, 2013) stated that the public interest is a common but rarely discussed feature in insolvency processes and she went on further to state public interest as a grounds for invoking such processes, (Kachara, 2021) added on to this by saying that all affected persons are entitled to have a say in the judicial management processes supported by the team production theory mention in the previous chapters. However, (Chen et al, 2021) argues that creditors interests are favored in corporate rescue mechanisms despite the lauded objectives of granting protection to all the other stakeholders' interests and this is shown by a total of 22.7% who opted for the creditor's interests. 22.7% went for the shareholders and 13.6% went for the employees, (Kachara, 2021) pointed out that employees are protected as their employee status is not altered while the proceedings. In conclusion the researcher derived that all stakeholders should be protected, and the judicial management procedure needs to be revised to allow for this not give too much precedence to creditors.



Source: Field work

FIGURE 4
WHOSE INTERESTS MUST BE PROTECTED BY JM

4.5 Comparison with other business rescue techniques

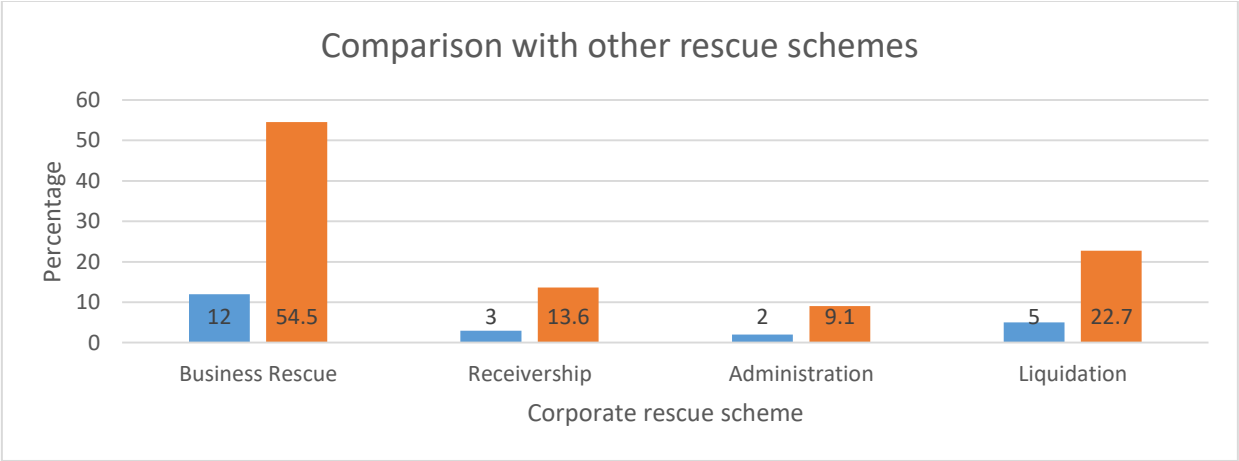


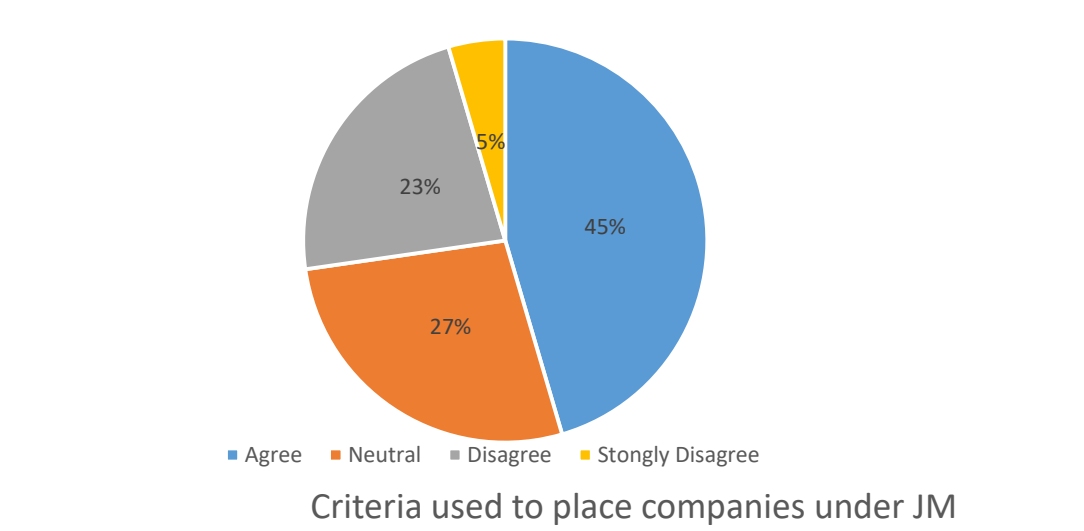
FIGURE 5
COMPARISON WITH OTHER CORPORATE RESCUE SCHEMES

The researchers asked if the judicial management scheme needed to be replaced by a new corporate rescue scheme and got the following results from the search. 54.5% chose the business rescue scheme (Kachara, 2021) supported this group's view as she pointed out that business rescue proceeding is more flexible and financially distressed company friendly as compared to judicial management and allows the firm to commence its voluntary proceedings without applying to court, thus saving already strained financial resources. 13.6% of the respondents opted for receivership as it set out to protects the interests the interests of secured

creditors as the duty of the receiver is first to the creditor before the debtor and (George, 2021) states that bankruptcy law aims at replacing the individual recovery actions by creditors with a collective system beneficial to all creditors, 9.1% opted for corporate voluntary arrangement and 22.7 chose liquidation as it guarantees timeous payments of debts to creditors however, this results in the loss of jobs by employees thus placing a burden on the government notes (Changwa, 2018).

4.6 The following factors have a negative impact on the success rate of the judicial management procedure

4.6.1 Criteria used to place a company under judicial management



Source: Field work

FIGURE 6
CRITERIA USED TO PLACE COMPANIES UNDER JUDICIAL MANAGEMENT

When asked whether the criteria used by the courts to satisfy themselves whether to grant a judicial management order had a negative impact on the success rate of the procedure, 45% of the respondents agreed. As (Vera, 2020) pointed out, before granting the order the courts must be satisfied that the company is unable to pay its debts and this criterion places a heavy burden on the entity to prove to the courts that thy are struggling thus straining the firm of their limited resources. 27% were neutral to the fact and 28% was evenly shared between those who disagreed and strongly disagreed, holding the view that if the courts do not use this criteria then the shareholders would use this technique to their benefit by keeping creditors waiting a long time for their dues as (Xaba, 2018) that because of this, the court may be reluctant to grant the order. The table above shows a mean of 2.86 thus indicating that the criteria used by the courts needs to be edified and consider all the loopholes therein.

4.6.3 Delays in granting provisional and final orders

Table 2. Statistics of the criteria for placemen under judicial management

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Criteria used to place a company under Judicial Management	22	2	5	2.86	.941

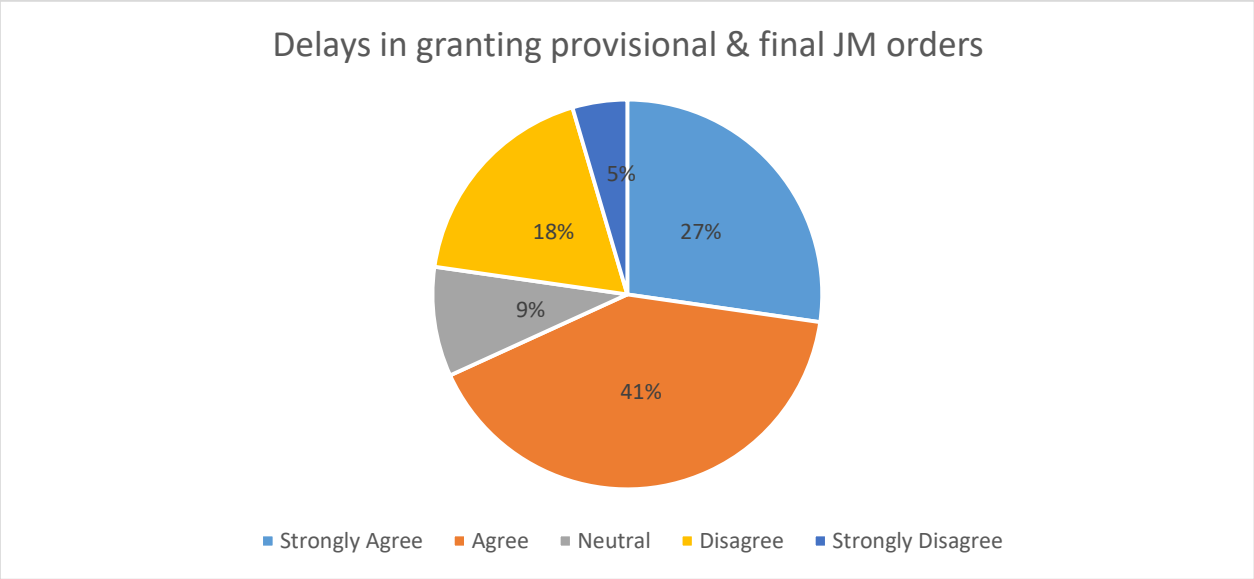


FIGURE 7
DELAYS IN GRANTING PROVISIONAL AND FINAL JM ORDERS

The researchers went on to ask if the delays in granting judicial management orders influenced the outcome of the process and the results were as follows, 41% of the respondents were in agreement and 27% of the respondents strongly agreed to the fact as shown below in fig 7. This means that a total of 68% of the population shared the view that those delays by the courts could delay the implementation of the much-needed turnaround strategies thus resulting in loss of business by the company as they miss out on opportunities and also the company's status may worsen as a result of the delays also resulting in loss of confidence in the business by stakeholders however 23% of the respondents had a different view on that matter and 9% of the respondents were indifferent to that fact. Conclusively it is indeed a negative factor which affects judicial management. The mean response as shown below was 2.32 which represents consensus by the respondents.

5. CONCLUSIONS

The effectiveness of judicial management as a corporate rescue mechanism has been increasingly questioned in contemporary economic contexts, where the complexities of modern business operations and financial frameworks demand more responsive and adaptable solutions. Originally designed to assist struggling enterprises, the judicial management regime is often perceived as cumbersome and slow-moving, failing to account for the dynamic challenges faced by businesses today. These businesses often grapple with rapidly changing market conditions, technological advancements, and shifting consumer demands, which require a more agile and holistic approach to rescue strategies. The limited focus on creditor interests, at the expense of other stakeholders such as employees, suppliers, and the local community, further exacerbates the shortcomings of the current regime. Thus, it is imperative to explore an enhanced corporate rescue framework that prioritizes the interests of all stakeholders while safeguarding the viability of the business itself.

To truly revamp the corporate rescue landscape, several key areas must be targeted for improvement. Education and training initiatives for business leaders and stakeholders regarding financial management and crisis response can empower companies to proactively address potential issues before they escalate. Fiscal relief measures tailored to specific industries or circumstances can provide the necessary breathing room for businesses to restructure without resorting to costly and lengthy judicial management processes. Moreover,

establishing transparent oversight mechanisms can ensure that the rescue process remains accountable and focused on equitable outcomes for all parties involved. Access to alternative rescue techniques, including collaborative or community-based approaches, should be democratized to allow varied types of businesses—especially small and medium enterprises—to benefit from available resources and support systems. By instituting clear timelines for each stage of the rescue process, stakeholders can minimize uncertainty and foster a more supportive environment for business recovery. Collectively, these strategies would not only enhance the potential for successful corporate rescues but also contribute to broader economic stability, reducing the burden on governmental resources while promoting a resilient business ecosystem.

6. LIMITATIONS OF THE STUDY

The limitations of this study are as follows:

- This study primarily concentrates on the legal framework and practices concerning business rescue within a specific jurisdiction. While it aims to provide comprehensive insights and recommendations pertinent to this area, the findings may not be universally applicable to other regions that operate under different legal systems, economic conditions, and cultural factors. Business rescue laws can vary significantly across jurisdictions; therefore, stakeholders in different regions may not find the recommendations relevant or feasible. This limitation highlights the need for caution when interpreting and applying the study's findings outside the context of the target jurisdiction.
- The economic landscape is inherently dynamic, characterized by fluctuations that can significantly impact the implementation and effectiveness of business rescue initiatives. Factors such as shifts in market demand, regulatory changes, or unforeseen economic crises (e.g., recessions, pandemics) can disrupt the predicted outcomes suggested by the study. The recommendations put forward may be grounded in the current economic realities, and as these realities evolve, their relevance and applicability may diminish. This limitation necessitates ongoing evaluation and potential revision of the recommendations to ensure they remain effective in an ever-changing environment.
- Businesses entering judicial management often present a myriad of complex operational challenges that are highly specific to their circumstances. The study's findings may provide broad insights but may not encapsulate the intricacies faced by individual firms. Factors such as industry-specific considerations, internal management structures, financial states, and stakeholder dynamics can all play vital roles in shaping the business rescue process. Consequently, while the study may offer overarching principles, it may fall short in addressing the tailored approaches needed for unique cases, limiting its utility for practitioners or policymakers seeking specific solutions.
- The recommendations derived from this study may encounter resistance from various stakeholders—including creditors, regulators, and other interested parties—who may have conflicting interests or a general skepticism about the efficacy of business rescue processes. Stakeholders may be cautious about adopting the proposed recommendations due to fears of financial loss, concerns about disruptive changes, or mistrust in the judicial management system itself. This resistance can significantly hinder the acceptance and implementation of the recommendations, leading to a scenario where even well-grounded proposals do not materialize into practical actions. Further, the level of acceptance of the recommendations can vary widely among different stakeholders, influenced by their perceived benefits and drawbacks.

7. RECOMMENDATIONS FOR CORPORATE RESCUE

Educational initiatives targeted at stakeholders, including business owners, investors, and legal practitioners, are essential to enhancing awareness and understanding of corporate rescue options as viable alternatives to winding up in cases of financial distress. Many stakeholders may default to the conventional method of liquidation due to a lack of knowledge about various restructuring strategies, such as administration, debt moratoriums, or informal workouts, which can provide a lifeline to struggling companies. By equipping these individuals with the necessary knowledge about the benefits and processes associated with corporate recovery, stakeholders can make informed decisions that prioritize the survival and revitalization of businesses rather than hastily opting for dissolution. This shift in mindset not only preserves jobs and entrepreneurship but also contributes to the overall economic stability by maintaining the vibrancy of the marketplace. Ultimately,

fostering a culture of awareness and understanding around these alternative options can lead to better outcomes for companies in distress and promote a more resilient business ecosystem.

Considering the increasing prevalence of financial distress among businesses, it is crucial to develop targeted educational initiatives that inform stakeholders—such as business owners, investors, creditors, and legal professionals—about the various corporate rescue options available. By enhancing their understanding of alternatives to winding up, stakeholders can be better equipped to explore less adversarial and more constructive solutions, such as restructuring, debt refinancing, or entering formal insolvency processes that allow for business rehabilitation. This proactive approach can foster a culture of collaboration and innovation, enabling struggling companies to navigate their financial challenges more effectively while preserving jobs and sustaining local economies. Ultimately, these educational efforts can contribute to a healthier business ecosystem by encouraging early intervention and creating awareness of the benefits of seeking help before resorting to liquidation.

Judicial management is often a critical lifeline for companies facing severe financial distress, and exempting these entities from taxes during this crucial period could significantly enhance their chances of stabilization and recovery. By alleviating the tax burden, businesses would be afforded much-needed financial relief to reallocate resources towards operational improvements, debt restructuring, and workforce retention rather than diverting funds to tax obligations. This exemption would not only bolster their liquidity but also foster an environment conducive to strategic planning and innovation, enabling them to emerge from judicial management in a stronger position. Furthermore, such a policy could have broader economic benefits by preserving jobs and contributing to sustained economic activity, ultimately benefiting the community and state in the long run. By investing in the recovery of these companies today, we can pave the way for a more resilient business landscape tomorrow.

7.1 Future Implications

The implementation of these recommendations holds significant potential for transforming the business landscape and enhancing economic stability. By fostering a deeper understanding of corporate rescue among stakeholders, companies will be less likely to default winding up, thus preserving jobs and maintaining economic activity. Tax exemptions for companies under judicial management would provide them with the essential financial relief needed to reorient and stabilize operations, ultimately leading to a greater chance of recovery and sustainability. Establishing a governing body to monitor the performance of judicial managers will ensure transparency and accountability, thereby minimizing the risk of malpractice and bolstering stakeholder confidence in the judicial management process. Moreover, making business rescue techniques accessible to all entities will facilitate a broader safety net for businesses, supporting economic growth and reducing the socio-political strain on government resources. Finally, implementing stipulated timeframes for judicial management proceedings will streamline the process, fostering efficiency and enabling companies to regain stability without undue delay. Collectively, these measures could create a more resilient economy, fostering a culture of recovery over liquidation, while also enhancing investor and consumer confidence in the business ecosystem.

REFERENCES

1. Baird, D. G., & Jackson, T. H. (2004). Corporate reorganizations and the treatment of diverse ownership interests: a comment on adequate protection of secured creditors in bankruptcy. *Economic Analysis of the Law: Selected Readings*, 212-224.
2. Ben-Ishai, S. (2006). A team production theory of Canadian corporate law. *Alta. L. Rev.*, *44*, 299.
3. Blair, M. M. (2012). Corporate law and the team production problem. In *Research Handbook on the Economics of Corporate Law*. Edward Elgar Publishing.
4. Bradstreet, R. (2011). The new business rescue: Will creditors sink or swim?. *South African Law Journal*, *128*(2), 352-380.

5. Chan, T. E. (2013). The public interest in judicial management. *Sing. J. Legal Stud.*, 278.
6. Chatsanga, S. (2018). "Judicial management as a business rescue scheme" A critique of the effectiveness of judicial management as a rescue scheme.
7. Conradie, S., & Lamprecht, C. (2015). Business rescue: How can its success be evaluated at company level?. *Southern African Business Review*, *19*(3), 1-29.
8. Creswell, J. W., 2007. University of Nebraska-Lincoln. [Online] Available at: https://sbsrc.unl.edu/Introduction%20to%20Mixed%20Methods.pdf (Accessed 24 May 2023).
9. Dzvimbo, R. S. (2013). Should the Zimbabwean Companies Act move away from judicial management and adopt business rescue?.
10. Explorable, 2009. Research: Explorable. [Online] Available at: https://explorable.com/research-population (accessed 14 May 2023)
11. Fincham, J. E. (2008). Response rates and responsiveness for surveys, standards, and the Journal. *American journal of pharmaceutical education*, *72*(2).
12. Finch, V., & Milman, D. (2017). *Corporate insolvency law: perspectives and principles*. Cambridge University Press.
13. Goode, R. M. (2011). *Principles of corporate insolvency law*. Sweet & Maxwell.
14. Hahlo, H. R., 1977. South Africa Company Law Through the Cases. 3rd ed. s.l.:Juta & Co
15. Nsubuga, H. (2016). Corporate insolvency and employment protection: a theoretical perspective.
16. Institute of Chartered Accountants Zimbabwe, n.d. Institiue of Chartered Accountants Zimbabwe. [Online] Available at: https://www.icaz.org.zw/imisdocs/judicial_management_liquidation_and_curatorship.pdf (Accessed 19 march 2023).
17. Jackson, T. H., & Scott, R. E. (1989). On the nature of bankruptcy: An essay on bankruptcy sharing and the creditors' bargain. *Virginia Law Review*, 155-204.
18. Janger, E. J. (2018). The Creditors' Bargain Reconstituted: Comments on Barry Adler's the Creditors' Bargain Revisited. *U. Pa. L. Rev. Online*, *167*, 47.
19. Kachara, T., 2021. The Fundamentals of Corporate rescue Proceedings (online) Available at: http://www.lexafrica .com (Accessed 2 June 2023).
20. Kanokanga & Partners, 2018. Kanokanga & Partners. [Online] Available at: http://www.kanokangalawfirm.net/judicial-management-in-zimbabwe/ (Accessed 4 April 2023).
21. Kirshenblatt-Gimblett, B., 2006. Performance Studies Methods Course Syllabus. 1st ed. Spring: New York University
22. Kumaraendran, L. & Yang Wei, S. T., 2020. The CVA Scheme and how It Compares to Other Corporate Rescue Mechanisms, Thomas Phillips Advocates and Solicitors
23. London, Sweet & Maxwell, 1997. Principle of Corporate Insolvency Law. 2nd ed. s.l.:Goode
24. LoPucki, L. M. (2004). A team production theory of bankruptcy reorganization. *Vand. L. Rev.*, *57*, 741.
25. Loubser, A. (2010). *Some comparative aspects of corporate rescue in South African company law*. University of South Africa (South Africa).
26. Madhuku, L. (1995). Insolvency and the Corporate Debtor: Some Legal Aspects of Creditors Rights Under Corporate Insolvency in Zimbabwe.
27. Maphiri, M. (2018). The Suitability of South America's Business Rescue Procedure in the Reorganization of Small-to-Medium-Sized Enterprises: Lessons from Chapter 11 of the United States Bankruptcy Code. *Mich. Bus. & Entrepreneurial L. Rev.*, *8*, 101.
28. Maphiri, M. C. (2015). Business rescue in South Africa and its practical application to SME's (small to medium enterprises).
29. Matenga, F., 2020. Five companies out of judicial management, Harare: Harare Post
30. Mmopi, P. M. (2015). Judicial management in Botswana: is it time for change?.
31. Mokal, R. J. (2001). Priority as Pathology: the pari passu Myth. *The Cambridge Law Journal*, *60*(3), 581-621.
32. Mupini, T. C. (2018). An investigation of the factors that negatively affect the success of judicial management as a corporate rescue strategy in Zimbabwe.
33. Ofwono, F. I. (2014). *Suggested reasons for the failure of judicial management as a business rescue mechanism in South African law* (Doctoral dissertation).
34. Onakoya, A. B., & Olotu, A. E. (2017). Bankruptcy and insolvency: An exploration of relevant theories. *International Journal of Economics and Financial Issues*, *7*(3), 706-712.
35. Patterson, S., 2016. Oxford Journal of Legal Studies, 13 November

36. PWC Canada, 2018. Services: PWC Canada. [Online] Available at: https://www.pwc.com/ca/en/services/insolvency-assignments/what-isreceivership.html#:~:text=A%20Receivership%20is%20a%20remedy,defaults%20on%20its%20 (accessed 17 May 2023)
37. Singapore Legal Advice, 2019. Law Articles/Judicial Management: Singapore Legal Advice. [Online] Available at: https://singaporelegaladvice.com/law-articles/judicial-management (Accessed 06 May 2023.
38. Taherdoost, H. (2016). Sampling methods in research methodology; how to choose a sampling technique for research. *International journal of academic research in management (IJARM)*, *5*.
39. The Financial Gazette , 2015. African Markets. [Online] Available at: https://www.african-markets.com/en/news/southern-africa/zimbabwe/zimbabwe87-companies-liquidated-in-2014-60-placed-under-judicial-management (Accessed 21 December 2022).
40. The Herald, 2015. ZimPapers Digital The Herald. [Online] Available at: https://www.herald.co.zw/judicial-management-explained/ (Accessed 14 November 2022).
41. Too, F. C. (2015). *A comparative analysis of corporate insolvency laws: what is is the best option for Kenya?*. Nottingham Trent University (United Kingdom).
42. University of Minnesota, 2019. Evaluation Design and Implementation , Minnesota: University of Minnesota.
43. University of Witswatersrand, 2015. Research Support: University of Witswatersrand. [Online] Available at: https://libguides.wits.ac.za/c.php?g=693518&p=4914913 (Accessed 30 April 2023).
44. Vera A. T. 2020. An Appraisal of Zimbabwe's Business Rescue Procedure: Evaluation of the effectiveness of Judicial Management as a means to assist companies in financial turmoil, Chinhoyi, Chinhoyi University of Technology.
45. Warren, E. (1993). Bankruptcy policymaking in an imperfect world. *Mich. L. Rev.*, *92*, 336.
46. Xaba, N. T., 2018. The effects of business rescue on the companies' stakeholders: A comparative analysis between business rescue and judicial management, Durban: University of KwazuluNatal.
47. Zimbabwe Economic Policy and Research Unit - ZEPARU, 2014. Enhancing Zimbabwe's Regime for Resolving Corporate Financial Distress: Current challenges , Harare: Zimbabwe Economic Policy and Research Unit – ZEPARU.
48. Zimbabwe Legal Information Institute, 2017. Home>Judicial Management: ZimLII. [Online] Available at: https://zimlii.org/zm/flynote/judicial-management (Accessed 9 May 2023).
49. Zvobgo, T. C. (2016). *A comparative study into the effectiveness of business rescue strategies in South Africa and the judicial management system in Zimbabwe* (Master's thesis, University of Pretoria (South Africa)).